

REMARKS

This Amendment is responsive to the Examiner's action mailed October 10, 2003. Claims are rewritten as noted above.

Applicant has added the term "self-supporting" to its claims and to appropriate locations in the specification for antecedent purposes. No new matter is added. The "self-supporting" nature of the container of the invention is clearly inherent in the specification in many places. For example, see page 11, lines 3-16; page 15, line 10 through page 16, line 9; page 16, line 23 through page 17, line 2 and page 23, line 1 through page 24, line 11.

The Examiner's rejections are respectfully traversed.

The first rejection of claims 1-7, 9-14, 15-27, 29-34, 35 and 36 is erroneous. There are six publications cited in this rejection, with no motivation or suggestions, from any of them, to combine the teachings of any of them from the other. This invention provides a rigid, self-supporting container phrased in both method and apparatus terms for storing and marketing cotton candy with two significant advantages: both increased shelf life and protection from compression damage. This is provided by the claimed structure and method steps contemplating a rigid, self-supporting container. No prior art discloses this particular combination.

Two of the first three publications, Golub and reference "U" teach only flexible bags insofar as applicant can determine. There are no rigid, self-supporting containers. The bag of reference "U" (Packaging Week) is clearly flimsy and collapsible. The container of Golub is the same; not rigid or self-supporting, it would appear to collapse without the

addition of injected pressurized air. And one must wonder, why put more air, moisture laden, into the package where as little as possible moisture is desired? The Golub publication apparently does not concern itself with moisture degradation of the packaged product.

Turning now to Rich, Burstiner and Beall, none deal with cotton candy, none deal with moisture degradation of cotton candy, none deal with compression damage to cotton candy and none provide any suggestion that any disclosure therein could be joined with the disclosures of Golub or Packaging Week.

Under 35 USC 103, as numerous as recent and well-known cases state, there must be a motivation in the art to make the combination alleged as a basis of rejection.

Rejections must rest on a factual basis. In re Warner 379 F2d 1011, 154 USPQ 173, 177-178 (CCPA 1967). To support such combination rejections as are here made, these facts must arise from the art, and not from "doubts" of patentability, speculation, assumption or hindsight reconstruction to supply deficiencies in the factual basis. Without that suggestion from the art, the combination, and the rejection, fail.

There is simply no suggestion or teaching that any packaging apparatus or method of storing and marketing or display of cotton candy, as claimed, could be enhanced by a rigid, self-supporting container.

Accordingly, the attempt by the Examiner to establish a prima-facie case of obviousness is incomplete and the rejection must fail.

Likewise, and for the same reasons, the rejection of claims 8 and 28 under 35 USC 103 over the above references, plus Ruff ('463) also fails. Ruff adds nothing to suggest or motivate the claimed combinations of these two dependent claims.

The rejection of claim 1 under 35 USC 102 over the reference "U" (Packaging Week) is traversed. Golub does not show a rigid, self-supporting container as claimed, but relies on compressed air.

Moreover, Golub does not show the step of positioning the cotton candy in such a container through any opening therein, but only forming the container around the candy.

Also, moisture contact is not reduced, as noted in the claim, but increased by the injection of additional air. Finally, there is no disclosure of presenting the cotton candy "in the container for direct consumption by a consumer from the container". Apparently the halves of Golub would be fractured or destroyed.

Nor do the cited publications have any showing or teaching of many of the features of the dependent claims, including, for example, the specifically claimed features of claims 2-4, 16-18, 29, 33 and 34.

Applicant has considered the Examiner's reference to "Olde Tyme Foods". Applicant advises on information and belief that such activities of this company arise, if at all, through use of applicant's container, purchased by Olde Tyme, not more than one year prior to applicant's filing date of March 7, 2001.

Applicant intends to have its representative personally interview Examiner Weinstein and has initiated a call to this end. Applicant's invention has acquired commercial success, has been acclaimed by those of skill in the art, and satisfies a long-felt need. Applicant

desires to be able to present such evidence, should the Examiner feel it necessary, and therefore respectfully requests the Examiner's notification allowing submission of same prior to, or with the response to, any final Office Action.

Applicant respectfully requests reconsideration and allowance.

Please charge the one month extension fee and any additional claim fee to the undersigned's Deposit Account 23-3000. If any additional charges or credits are necessary to complete this communication, please apply them to Deposit Account 23-3000 as well.

Respectfully submitted,

 2/10/03
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MARKED UP VERSION SHOWING CHANGES MADE

In the specification, page 11, the first full paragraph has been amended as follows:

In accordance with another aspect of the present invention, the container is sufficiently rigid to stackably support another container without compression of the cotton candy in any of the containers. In that way, a plurality of containers filled with cotton candy may be stacked and placed in a shipping structure or on a display shelf. The rigid, self-supporting container provides the wholesaler and retailer with a product which may be easily shipped, stored, and handled without damage to the delicate cotton candy. In one embodiment of the invention, the container has a flat bottom and therefore may be stacked on a flat display shelf along with other traditional food items. The present invention therefore eliminates the need for an awkward and cumbersome display tree or rack for displaying the cotton candy product. The product is easy to remove and re-stock on a shelf. Special delicate handling of the product is also no longer necessary.

In the specification, page 15, the first full paragraph has been amended as follows:

Container body 20 is referred to herein as a "rigid" container body, and is

preferably formed of a suitable moldable synthetic or plastic material, such as polypropylene. The rigidity of container body 20 is relative, and the container body is significantly rigid and self-supporting relative to the non-rigidity or flimsiness of a plastic bag which is utilized in the prior art for packaging and marketing pre-made cotton candy. The container body 20 is rigid enough to define a generally static volume within and hold its shape and generally prevent the fluffy wad 10 from being easily compressed or smashed. Particularly, the container body 20 is sufficiently rigid to hold its shape and withstand greater pressures thereon than would a flimsy prior art plastic bag. While polypropylene is one suitable plastic material for forming rigid container body 20, other plastics and suitable materials might also be utilized to mold container body 20. A container formed of polypropylene of a particular construction has been found to be suitably rigid, and to provide a

In the specification, page 23, the first paragraph has been amended and reads as follows:

In accordance with another aspect of the present invention, cotton candy is presented to a consumer within a significantly rigid container for direct consumption from the container. The container is configured to stackably engage another container. More specifically, the lid 30 is configured to stackably engage a bottom of another similar rigid container body, and the container is sufficiently rigid or self-supporting to stackably support another container without compressing the cotton candy therein.

Referring to Figure 2, the plurality of stacked containers may then be placed in a rectangular shipping structure 40, such as a box, for shipment. The rigid container protects the fragile cotton candy wad 10, and prevents it from being smashed or otherwise damaged due to the weight of the other product stacked above each wad. This further increases the profitability of the cotton candy maker.

In the specification, claims 1, 4, 7-9, 15, 25, 30, 31, 32, 35 and 36 are rewritten as follows:

1. (TWICE AMENDED) A method of marketing and selling cotton candy comprising:
 - forming cotton candy from molten sugar to form a fluffy wad of cotton candy;
 - positioning the fluffy wad of cotton candy in a rigid, self-supporting container body through an opening in the container body, the container body being significantly gas impermeable and surrounding the cotton candy wad to generally protect the wad from being easily compressed;
 - sealing the container body opening in a significantly airtight fashion to form a closed container, the closed container defining a generally gas impermeable volume surrounding the wad of cotton candy to reduce moisture contact with the cotton candy and maintain its freshness;
 - presenting the wad of cotton candy in the container for direct consumption by a consumer from the container.

4. (AMENDED) The method of claim 3 [wherein] including the step of positioning the wad of cotton candy in said container [has] having a wall thickness of approximately 0.011 inches.

7. (AMENDED) The method of claim 1 including the step of [using] positioning said wad of cotton candy in a container which is sufficiently rigid to stackably support another container without compression of the cotton candy product therein.

8. (AMENDED) The method of claim 5 wherein the lid is configured to stackably engage a bottom of another rigid container, and including the step of stacking one of said containers on another.

9. (AMENDED) The method of claim 1 wherein the step of positioning a wad of cotton candy includes positioning said wad in a container [includes] having a generally flat bottom.

15. (AMENDED) A food product comprising:

a fluffy wad of cotton candy;

a rigid, self-supporting container enclosing the wad of cotton candy within a sealed volume;

the container defining a significantly gas impermeable sealed volume which

surrounds the cotton candy wad and reduces moisture contact with the cotton candy to maintain the freshness of the cotton candy wad.

25. (AMENDED) A method of marketing and selling cotton candy comprising:

forming a fluffy wad of cotton candy;

positioning the fluffy wad of cotton candy in a rigid, self-supporting container and sealing the rigid container around the wad of cotton candy;

the rigid container defining a static volume which surrounds the cotton candy wad and the container protecting the wad from being easily compressed and damaged; and

[The] the container maintaining the cotton candy from moisture sufficient to degrade the cotton candy for a period of at least two weeks.

30. (AMENDED) A food product comprising:

a fluffy wad of cotton candy;

a rigid, self-supporting container body enclosing the wad of cotton candy within a sealed volume;

the rigid container body defining a static volume which surrounds the cotton candy wad and generally protects the wad from being easily compressed and damaged, and maintains the cotton candy from moisture sufficient to degrade the cotton candy for a period of at least two weeks.

31. (AMENDED) A food product comprising:

a fluffy wad of cotton candy;

a rigid, self-supporting container enclosing the wad of cotton candy within a sealed volume;

the container being significantly gas impermeable and operable for reducing the exposure of the wad of cotton candy to moisture in the ambient atmosphere to establish a shelf life of the food product of at least one month.

32. (AMENDED) The food product of claim 31 wherein said container includes [a body and] a lid, the lid being snap sealed with the container body for providing the significantly gas impermeable container.

35. (AMENDED) A method of marketing and selling cotton candy comprising:

positioning a fluffy wad of cotton candy in a rigid, self-supporting, container body through an opening in the container body, the container body being significantly gas impermeable and surrounding the cotton candy wad to generally protect the wad from being easily compressed;

sealing the container body opening in a significantly airtight fashion to form a closed container, the closed container defining a generally gas impermeable volume surrounding the wad of cotton candy to reduce moisture contact with the cotton

candy and maintain its freshness;

presenting the wad of cotton candy in the container for direct consumption by a consumer from the container.

36. (AMENDED) A method of marketing and selling cotton candy comprising:

positioning a fluffy wad of cotton candy in a rigid, self-supporting container and sealing the rigid container around the wad of cotton candy;

the rigid container defining a static volume which surrounds the cotton candy wad and the container protecting the wad from being easily compressed and damaged; and

the container maintaining the cotton candy from moisture sufficient to degrade the cotton candy for a period of at least two weeks.

The following new claims 37-43 are added as follows:

37. A method as in claim 1 wherein said sealing step includes applying a releasable top to said opening in said container.

38. A food product as in claim 15 wherein said container includes an opening sealed by a closable closure.

39. A method as in claim 25 wherein said container has an opening for receipt therein of said wad and said sealing step includes applying a reclosable closure to said opening.

40. A food product as in claim 30 wherein said container includes an opening covered and sealed with a reclosable closure.

41. A food product as in claim 31 wherein said container includes an opening covered and sealed with a reclosable closure.

42. A method as in claim 35 wherein said sealing step includes sealing said opening with a reclosable closure.

43. A method as in claim 36 wherein said sealing step includes applying a reclosable closure to an opening in said container through which cotton candy is positioned therein.